

**BEFORE THE KANSAS STATE BOARD OF PHARMACY  
900 SW JACKSON, STE. 560  
TOPEKA, KS 66612-1597**

<b>KANSAS BOARD OF PHARMACY</b>	)	
	)	
v.	)	<b>Case Numbers 06-91, 07-88, 08-22</b>
	)	
<b>JOLANE POINDEXTER</b>	)	
_____	)	

**EMERGENCY ORDER**

**I. Statement of the Case**

On or about February 6, 2008, the Kansas Board of Pharmacy (Board) received a complaint from a widow who claimed Hogan's Pharmacy (Hogan's) improperly dispensed a prescription drug to her husband via the internet. The complaint alleged that the drug, Soma, led to her husband's death. A toxicology report confirmed that Carisoprodol, the generic name for Soma, and another drug Zolpidem, the generic name for Ambien, were in her husband's blood stream. The coroner's report identified the cause of death as a "mixed drug intoxication."

Prior to the widow's complaint, the Board received a complaint from a father whose daughter received Carisoprodol in the mail from Hogan's. The Colorado resident said his daughter had been denied medications locally because of her drug addiction, but complained that she was able to purchase medication via the internet from Hogan's.

Investigations revealed that Hogan's, through two pharmacists and two pharmacy technicians, dispensed a high volume of drugs in internet sales. The volume of drugs dispensed, together with inadequate information elicited before filling the prescriptions, combine to create a pattern of unprofessional conduct that exploits patients with drug seeking or addictive behaviors.

10. On September 25, 2007, the Colorado State Board of Pharmacy issued a Cease and Desist Order to Hogan's for delivering prescriptions to Colorado residents without registering as a nonresident prescription drug outlet. Exhibit 1 is the Colorado order. Exhibit 1 is incorporated herein as though recited in full.

11. On or about February 6, 2008, the Board received a complaint from a widow who claimed Hogan's improperly dispensed a prescription drug to her husband via the internet resulting in his death.

12. Kansas Attorney General Special Agent Korby Harshaw interviewed the widow.

13. The widow explained to Special Agent Harshaw that her husband became addicted to Soma following a car accident in which he injured his back. She described her husband's episodes of disorientation and loss of muscle control as "Soma Comas."

14. The widow said her husband turned to an internet pharmacy because her husband could no longer obtain prescriptions for the amount he wanted from his doctor.

15. She said that he had regularly taken as many as 10-12 pills a night before going to bed.

16. On August 25, 2007, she said her husband told her he had taken nine Soma pills before bed. At approximately 8:30 p.m., she went into their bedroom and found her husband slumped over near a pool of vomit, unresponsive, and not breathing.

17. The coroner's report listed the cause of death as a "mixed drug intoxication." A copy of the coroner's external examination report is attached as Exhibit 2. Exhibit 2 is incorporated herein as though recited in full.

18. Following his death, a co-worker reviewed the deceased's email account at work. The co-worker said that the deceased's inbox contained several emails

reminding him to reorder his pills. The co-worker also recalled seeing several Fed-Ex shipments for the widow's husband.

19. The widow contacted Federal Express and learned that the packages were sent from Hogan's.

20. On February 26, 2008, Special Agent Korby Harshaw and Special Agent Daren Fox met with Amber Boyd, a former pharmacy technician at Hogan's.

21. Boyd started working as a pharmacy technician for Hogan's on or about March 3, 2007. She interviewed for the job with owner Jolane Poindexter who described the business as an "internet pharmacy."

22. Boyd said her duties included reviewing prescriptions to make sure basic information matched. Boyd would confirm that females were not ordering Viagra or that people received the appropriate medication for back pain versus headaches.

23. Boyd said there were days when she would deny a hundred prescriptions which had already been approved by Dr. Buckley.

24. On at least a half dozen cases, Jolane Poindexter would direct Boyd to change items completed by the patient on a questionnaire so that what would appear as the patient's answers would match the drug being provided.

25. Jolane Poindexter is not a pharmacist.

26. As an example, Boyd said once a patient requested Fioricet for back pain. Boyd changed the patient's description of the medical condition from back pain to headaches because she understood that Fioricet should not be prescribed for back pain.

27. Boyd said the pharmacist on staff at Hogan's, Rick Kloxin, R.Ph. would review the prescription by looking at the bottle and compare it to the printed prescription. She said the pharmacist would not review any other information.

28. Boyd recalled Mr. Kloxin telling her, "It would be impossible for the doctor to review each script coming through Hogan's." Even though Mr. Kloxin acknowledged that the prescriptions were not legitimate, he continued to fill prescriptions ordered through the internet.

29. Boyd also recalled a time when Jim Kinderknecht, R.Ph. a Chief Inspector from the Board visited the pharmacy. Boyd was told to hide the end-of-day reports from him. As Mr. Kinderknecht asked her questions, Ms. Poindexter would hit the back of her chair to indicate Boyd should not answer a particular question.

30. Boyd also said that the pharmacy was 95% internet and it was obvious they "were not getting legitimate orders." Boyd described the requests for prescriptions as coming from "pill poppers."

31. Boyd said, "There was not enough time in the day to thoroughly look at all the prescriptions."

32. On March 4, 2008, Special Agent Korby Harshaw spoke with Rosie Grow.

33. Rosie Grow said she worked in the back of Hogan's as a shipping clerk.

34. Ms. Grow is not and never has been a pharmacy technician registered with the Board.

35. Ms. Grow said that Ms. Poindexter would email prescription labels to the store from home indicating that she had approved them from her house.

36. Ms. Grow also said that a pharmacy technician would take a pre-filled pill bottle and affix a label to it that she received over the internet. The bottle was handed to a pharmacist who would then look at the bottle. The pharmacist would then set the pill bottle down in front of her, and she would package and label the pills for shipping. Ms. Grow said that she shipped pills all over the country.

37. Ms. Grow said that she would package and ship between 300 and 500 prescriptions for a DHL pick up around noon. She then would package an additional 300 to 500 prescriptions in the afternoon to be picked up by Federal Express at about 5:00 p.m.

38. Ms. Grow said that she started experiencing problems with her hands and limited her shipping work to half days. She said she then filled prescription bottles using one of two filling machines in the back room.

39. On or about January 4, 2007 and again on or about July 13, 2007, the Board issued subpoenas for information regarding internet activity. Information received from Hogan's showed that Hogan's record of prescriptions included questionnaires.

40. The questionnaires ask the patient whether they have previously been prescribed the medication they were requesting from Hogan's. The vast majority of the questionnaires, if not all the questionnaires, show the patient answered "yes" to the question. Exhibit 3, attached hereto, is a prescription and questionnaire for a patient located in Plattsmouth, Nebraska. Exhibit 3 is incorporated herein as though recited in full. Information that could identify the patient has been redacted from this Exhibit.

41. The questionnaire also asks, "Is your Personal Healthcare Practitioner aware that you are requesting this medication?" See, Exhibit 3.

42. The response recorded on almost every questionnaire if not on all questionnaires to the question above is "Yes." See, Exhibit 3.

43. Questionnaires also show that Hogan's delivered medication to drop-off locations or pick-up locations, such as Federal Express. Exhibit 4 constitutes copies of questionnaires and prescriptions with drop-off or pick-up locations identified as the shipping address. Exhibit 4 is incorporated herein as though recited in full.

44. Questionnaires also show that a doctor named Joyce W. Buckley wrote prescriptions filled at Hogan's. Exhibit 4.

45. Joyce W. Buckley's license is a limited three year license and is restricted to an approved underserved area or facility in New York. Dr. Buckley's license is in the field of "gynecology only." Exhibit 5 is a copy of public licensing information about Dr. Buckley easily obtained by Jim Kinderknecht, R.Ph. through the internet. Exhibit 5 is incorporated herein as though recited in full.

46. On July 16, 2007, Board inspectors Jim Kinderknecht, R.Ph. and Carly Haynes, R.Ph., visited Hogan's.

47. Ms. Haynes took pictures showing stacks of unlabeled pill bottles on shelves. Copies of two pictures taken by Ms. Haynes during her July 16, 2007 inspection are attached to this order as Exhibit 6 and are incorporated herein as though recited in full.

48. Ms. Haynes also asked about incident reports during her July 16, 2007 visit. Ms. Poindexter showed a report to Ms. Haynes titled "This represents our (Hogan's Pharmacy) Incident Reports." Two items on the report were labeled a "mix-up." The report did not contain the information required for incident reports for the two incidents labeled a "mix-up."

49. Ms. Haynes asked Ms. Poindexter about counseling of patients on all new

same patient if the patient uses different internet sites. Ms. Poindexter said, "Technically yes, unless someone recognized the name."

51. Laurence B. Leamer, R.Ph, told Ms. Haynes he would check between 300-400 prescriptions per day.

52. Utah and Missouri also disciplined Hogan's. Exhibit 7 is evidence of the discipline of Hogan's in Utah. Exhibit 7 is incorporated herein as though recited in full. Exhibit 8 is evidence of the discipline of Hogan's in Missouri. Exhibit 8 is incorporated herein as though recited in full.

53. On March 10, 2008, emergency orders were issued against Laurence B. Leamer, R.Ph., Rick Kloxin, R.Ph., and Hogan's Pharmacy ordering the immediate cessation of all operations at the pharmacy.

#### **IV. Conclusions of Fact and Law**

##### **A. Acts of Unprofessional Conduct or Professional Incompetency**

###### **i. Definitions and Authority**

54. "Unprofessional conduct" means intentionally falsifying or altering records or prescriptions, conduct likely to harm the public, and the commission of any act of exploitation related to the licensee's professional practice. K.S.A. 65-1626(hh)(4), (7), & (9).

55. "Professional incompetency" means one or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence or repeated instances of ordinary negligence. K.S.A. 65-1626(ee).

56. Pursuant to K.S.A. 65-1663(c), the Board may limit, suspend, or revoke a registration of a pharmacy technician on any ground authorized against the license of a

pharmacist under K.S.A. 65-1627. The Board may revoke, suspend, place on a probationary status or deny a license to a pharmacist who is found guilty of unprofessional conduct or professional incompetency. K.S.A. 65-1627(a)(3).

57. "In every store, shop or other place defined in this act as a 'pharmacy' there shall be a pharmacist in charge and, except as otherwise provided by law, the compounding and dispensing of prescriptions shall be limited to pharmacists only," K.S.A.65-1637.

58. K.A.R. 68-2-20(a) requires that the "judgmental functions that constitute the filling or refilling of a prescription shall be performed only by a licensed pharmacist or by a pharmacy student or intern under the direct supervision of a licensed pharmacist . . . ."

59. K.A.R. 68-2-22(a)(b) & (c) require that electronically prescribed medications shall be dispensed "within the course of legitimate professional practice," be transmitted by "an authorized prescriber," and be dispensed with the "pharmacist's professional judgment regarding accuracy, validity, and authenticity of the prescription drug order communicated by way of electronic transmission . . . ."

60. K.S.A. 65-1663(c)(3) authorizes the Board to:

. . . temporarily suspend or temporarily limit the registration of any pharmacy technician in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action under this section against the registrant and that the registrant's continuation in practice would constitute an imminent danger to the public health and safety.

*Id.*